

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-806
)	
Professional Communications Inc.)	NAL/Acct. No.200332560009
Owner of Antenna Structure #1037282 located)	
near Peculiar, Missouri)	FRN 0006-1497-36
Houston, Texas)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 24, 2003

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Professional Communications Inc. (“PCI”), owner of antenna structure #1037282, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000.00) for willful and repeated violation of Section 17.51(a) of the Commission's Rules (“Rules”).¹ Specifically, we find Professional Communications Inc. apparently liable for failure to exhibit all red obstruction lighting from sunset to sunrise during the period of November 11-15, 2002, and on December 3, 2002.

II. BACKGROUND

2. On November 11, 2002, a tenant on PCI's antenna structure #1037282 telephoned PCI representative Eran Epstein notifying him of the outage of lighting on the structure, including the outage of a beacon. Mr. Epstein contacted United Tower Inc. (“UTI”) in Wichita, Kansas and contracted with them to conduct repairs on the structure. The Federal Aviation Administration (“FAA”) was not notified of the outage of the lighting on the structure because PCI incorrectly assumed their monitoring company, TowerSentry, had received an alarm and had contacted the FAA.

3. On November 15, 2002, UTI personnel repaired the outages by replacing all lamps on the structure, including 6 beacon bulbs and 9 side light bulbs.

4. On December 3, 2002, at approximately 6:25 A.M., an agent from the FCC's Kansas City Field Office (“Kansas City Office”) conducted an inspection of PCI's antenna structure #1037282. The agent noted that only the topmost flashing beacon was in operation. A second beacon at the 1/3 overall height level was lighted, but not flashing. The side lighting at the 1/6 overall height level was in

¹ 47 C.F.R. § 17.51(a).

operation as was one lamp at the 1/2 overall height level. No lighting was observed between the 1/2 overall height level and the top flashing beacon. At approximately 9:00 A.M. this date, the agent contacted PCI representative Eran Epstein by telephone concerning the condition of the lighting on the structure. At the time of that call, PCI was unaware of the outage, no alarms had been received by the monitoring company, TowerSentry, and the FAA had not been notified of the outage.

5. On December 4, 2002, PCI submitted a faxed memo and logs to FCC, Kansas City Office. The documentation indicates that no light outages were logged during the period of November 1, 2002 through, and including, December 3, 2002. During that same period, the FAA was notified only once of light outages on the structure, and that notification was made at 11:00 A.M. on December 3, 2002. The memo indicated that mice had eaten through the wiring causing the outage of the lighting.

6. On December 4, 2002, the Kansas City Office issued a Letter of Inquiry ("LOI") to PCI requesting information pertaining to the logging, alarm and lighting maintenance, and monitoring practices of PCI for this structure.

7. On December 9, 2002, PCI submitted a reply to the LOI. The reply stated that PCI has now engaged United Towers Inc. to perform required quarterly tower inspections of both the lighting system as well as components of the alarm system. The letter further stated that the damaged alarm system prevented TowerSentry from receiving an indication of the outage which resulted in no logs being made of the outage and no notifications being made to PCI or UTI. The reply also confirmed that PCI was the owner of the structure.

III. DISCUSSION

8. Section 17.51(a) of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise. The Antenna Structure Registration for PCI's antenna structure #1037282 requires that red obstruction lighting be exhibited at night. During the period of November 11-15, 2002 and on December 3, 2002, one or more beacons were inoperable on the antenna structure bearing FCC registration #1037282 and located near Peculiar, Missouri. The outage of at least one beacon was noted by a tenant operating from this structure, who notified PCI via telephone on November 11, 2002. That outage was not repaired until November 15, 2002 according to PCI's own reports and records. The outage of December 3, 2002 was noted by an FCC agent and included the outage of two beacons and several side lights. No report was made to the FAA concerning any of the noted outages until after the FCC made contact with the PCI representative on December 3, 2002.² The PCI representative was personally notified of the outage on November 11, 2002, but no log entries were made documenting the outage³ and there is no indication that

² The owner of any registered antenna structure with assigned lighting specifications must report immediately to the nearest FAA Flight Service Station of the FAA any known improper functioning of any top or flashing obstruction light not corrected within 30 minutes. *See* 47 C.F.R. § 17.48(a).

³ The owner of any registered antenna structure with assigned lighting specifications must maintain a record of any

any attempt was made to determine the reasons why PCI received a telephone call from a tenant instead of notification from TowerSentry. PCI was not conducting required inspections of the lighting and alarm systems or taking the steps necessary to properly maintain these systems prior to FCC notification.⁴

9. Based on the evidence before us, we find PCI willfully⁵ and repeatedly⁶ violated Section 17.51(a) of the Rules by failing to exhibit all red obstruction lighting from sunset to sunrise during the period of November 11-15, 2002, and on December 3, 2002.

10. Pursuant to Section 1.80(b)(4) of the Rules,⁷ the base forfeiture amount for failure to comply with prescribed lighting is \$10,000.00. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Considering the entire record and applying the factors listed above, this case warrants a \$10,000.00 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁰ Professional Communications Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000.00) for willful and repeated violation of Section 17.51(a) of the Rules by failing to exhibit all red obstruction lighting from sunset to sunrise during the period of November 11-15, 2002, and on December 3, 2002.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Professional Communications Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the

known improper functioning of a structure light. *See* 47 C.F.R. § 17.49.

⁴ *See* 47 C.F.R. § 17.47.

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁶ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁷ 47 C.F.R. § 1.80(b)(4).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80.

order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

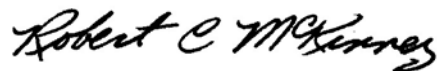
14. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Professional Communications Inc., 8588 Katy Fwy, Suite 240, Houston, Texas 77024.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Robert C. McKinney". The signature is written in a cursive, flowing style.

Robert C. McKinney

¹¹ See 47 C.F.R. § 1.1914.

Kansas City Office, Enforcement Bureau

Attachment

ATTACHMENT A

FCC List of Small Entities

As described below, a “small entity” may be a small organization,
a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

International Services	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	
700 MHZ Guard Band Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	

Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	

On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)